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Current Topics.

Juvenile Delinquency.

We have frequently had occasion in these columns to make reference to the subject of juvenile delinquency which in recent years has tended to become more serious in its incidence. Shortly before the recess LORD WINTERTON, Chancellor of the Duchy of Lancaster, announced in the House of Commons that an inquiry into the subject was to take place, and it was recently indicated that this inquiry is to be conducted by Professor A. M. CARR-SAUNDERS, Director of the London School of Economics. Some particulars of the measures to be adopted in collecting the relevant information are now available, and in view of the importance of the subject these may be briefly indicated. Professor CARR-SAUNDERS has designed a special type of card which provides for the collection of full particulars of offences, the offender, his parents and guardians, home circumstances, and surroundings, in a form which is said to combine ease of recording with systematic tabulation. Instructions are to be issued to probation officers in the Metropolitan Police District to fill up the cards with details of 1,000 new cases coming before the juvenile courts in that district in which a boy under seventeen years of age is concerned, and in which the offence, if committed by an adult, would involve a sentence of imprisonment without the option of a fine. Such records will be compared with those of boys of good character of the same age and from the same school, selected haphazard, to be compiled from information provided by the London County Council Education Department. Similar methods are to be used to obtain information concerning cases coming before the juvenile courts at Cardiff, Hull, Leeds, Manchester, Nottingham and Sheffield during the six months beginning 1st October. These records, it is hoped, will furnish material for a system of scientific analysis which will enable recommendations to be made for checking juvenile crime. One might be pardoned for entertaining some doubts concerning the effectiveness of such methods with reference to the vagaries of human conduct, and it may readily be conceded that the exceptional case may not furnish useful information on being subjected to the

proposed analysis, however penetrating. Such a consideration does not, however, rule out the possible utility of the method for the average case, and the large number of cases it is proposed to tabulate may well exhibit certain factors, hitherto regarded as largely accidental accompaniments of crime, to be in reality as in some degree causal. If this proves to be so, the inquiry will not have been held in vain.

Holidays with Pay and Unemployment Insurance.

ATTENTION was recently drawn in *The Times* to a difficulty which has arisen in connection with holidays-with-pay agreements as they affect the unemployment insurance system. It is recalled that the difficulty was foreseen by the Amulree Committee, which reported on holidays with pay last April, and that the matter was referred some time ago by the Ministry of Labour to the Beveridge Unemployment Statutory Committee. It appears that if an employer simply pays his workmen in the ordinary way while they are on holiday he becomes responsible for stamping their unemployment insurance and health insurance cards, which adds to his costs; while, if holiday pay is made either gratuitously or by way of deduction from weekly wages, the workman, if he has only been for a short time in a firm's employ, may be worse off through receiving holiday pay than he would be if he were drawing benefit. Generally, a claimant is not entitled to benefit if he receives a contractual payment in respect of a holiday period, and this applies even if the payment is less than the ordinary rates and if the holiday is not actually taken at the time of his dismissal. Benefit is, however, generally allowed where the payments are in the nature of a gratuity. One aspect of the position is illustrated by a case referred to in the article in which the umpire decided that an *ex gratia* holiday payment of £2 9s. 9d. must be reckoned as wages received on the first four days of the recognised holiday and that consequently the recipient was not entitled to receive benefit in respect of them. The article also intimates that workers seem to have been unfortunately placed as to the drawing of benefit where they have lost their employment immediately before or after a holiday-with-pay period. The implications of paid holidays in relation to

unemployment, it is stated, were apparently not recognised when the Unemployment Insurance Act, 1935, was passed, and an amendment of the law may have to be recommended by the Beveridge Committee.

Road Transport and "Bureaucracy."

An interesting memorandum was recently issued by the British Road Federation, voicing a complaint concerning the multiplicity of regulations relating to the road transport industry and drawing attention to what is alleged to be a "disparity between the haste of restrictive legislation and the tardiness of constructive action." The difficulties occasioned by the ever-increasing mass of legislation in nearly all branches of law are well known to practitioners, and it may not be out of place to recall, with the aid of the foregoing memorandum, some of the new provisions with which the industry has recently been confronted. It is stated that since January of the present year fourteen Acts and Orders have been passed and issued by Parliament and the Ministry of Transport dealing with various aspects of road transport. Subjects which have been covered include speed limits, index marks, number plates, broken-down vehicles, steam vehicles, taxation, omnibuses, sand and ballast, drivers' licences, exempted vehicles, special types, pedestrian crossings; while, in addition, the industry has been concerned with the provisions of the Road Haulage Wages Act and the Young Persons (Employment) Act. The chairman of the British Road Federation, it appears, protested strongly against the way in which the former of these Acts was passed, and it is recalled that the latter went through the House of Commons in less than three weeks. It is urged that not only is the industry loaded down with regulations, but also that much of this is hurried through without time for proper consideration by Parliament. "While some of these new enactments," the memorandum states, "are welcome, and one or two unavoidable, they represent a mass of detailed directions which the industry has to support financially, to work out, and to apply as best it can to all the infinitely varying conditions of everyday life." The "urge towards bureaucratic control which all those in official circles appear to take for granted, and which, moreover, is brought about with such undue haste," is strongly deprecated. It would be out of place to enter into a discussion here as to how far such complaints are justified with reference to the subject-matter concerned, but it may be said with some confidence that practitioners would, in general, welcome some decrease in the volume of the legislation, whether by statute or order, which they are called upon annually to master.

Air Raid Precautions: Procedure by Stages.

THE Air Raid Precautions Department of the Home Office has recently issued a publication entitled "Stages in the Preparation of a Local Authority's Air Raid General Precautions Scheme" (H.M. Stationery Office, price 2d. net), containing notes on matters referred to in the schedule to the Air Raid Precautions (General Schemes) Regulations, 1938, which were enclosed with the circular from the Department, dated 28th March, 1938. An explanatory circular states that in seeking means by which the progress of local authorities in the preparation of schemes may be facilitated, the Home Secretary has thought that it would be helpful, both to local authorities and to the Department, if the work in some of its aspects could be divided into defined stages. Some of these stages can, it is said, if desired, be regarded as schemes in respect of separate subjects under the Regulations, as envisaged in paragraph 4 of the Home Office circular of the 28th March, 1938. Alternatively, they can be treated less formally, and be regarded simply as instalments towards a complete scheme. For practical purposes it is suggested that the second alternative will prove equally satisfactory. It is indicated that the payment

of grant is not dependent on the prior approval of a formal scheme. Grant is payable on expenditure incurred with the concurrence of the Secretary of State, and this can be given independently of the approval of a formal scheme. The circular does not purport to deal with the creation of suitable administrative arrangements for present organisations with which, to a great extent, since the Air Raid Precautions Act, 1937, was passed, local authorities have inevitably been concerned. Nor is it concerned with the recruitment and training of personnel for air raid precautions services, which is already being dealt with as a separate matter. The circular states that an important part of the ultimate scheme consists in particular arrangements which are largely connected with the use of buildings for special war-time purposes and for peace-time storage. The Home Secretary recognises that much detailed work has to be done, and in many cases detailed approval from the Home Office obtained, before a complete scheme under the Act can be framed in a form in which it can be approved. It seems to him that if this work were divided into defined and recognised stages which could be tackled and completed individually, progress on different aspects of air raid precautions could proceed independently, and the completion of each stage would represent a definite mile-stone on the way to the final objective. The notes to which reference has been made are intended to represent a first outline of these stages. They do not cover comprehensively the whole of the stages of an ultimate scheme, and it is intended that they should be re-issued from time to time with amplification.

Aerodromes and Town Planning.

THE powers which the local authorities have or can obtain under the Town and Country Planning Act, 1932, are alluded to in a pamphlet entitled "The Principles Governing the Planning and Zoning of Land Aerodromes" which has recently been issued by the Air Ministry. It is indicated that the provision for an aerodrome has to be thought out long before the need for its use arises, and that when the time comes when it would pay to construct and run an aerodrome all the suitable land may be built over. The powers alluded to should, therefore, prove very valuable to the local authorities in preserving suitable land for the purpose and in controlling building development round the site so that the air approaches are not blocked up. The pamphlet explains, in the light of the recommendations of the Maybury Report, what are the minimum requirements for the landing area, flightways and approaches for a "standard aerodrome"—or an aerodrome which can be used for regular air line services in all weathers—and shows how different the modern "planned" aerodrome is from the grass field out of which it has grown. The necessity for preventing building development near the boundaries of the aerodrome which might constitute a perpetual danger to aircraft is duly emphasised. The pamphlet is published by H.M. Stationery Office, price 6d. net.

Rules and Orders: District Probate Registries.

THE attention of readers should be drawn to the District Probate Registries Order, 1938 (S.R. & O., 1938, No. 757/L.19), which has been made by the President of the Probate Division with the concurrence of the Lord Chancellor and the Treasury in accordance with the provisions of s. 108 (3) of the Supreme Court of Judicature (Consolidation) Act, 1925, relating to the modification or variation of the Second Schedule to the Act entitled "Scheme for the Establishment of District Probate Registries." The order follows (with the exception of the deletion of Bangor from Group 5) the draft order which was set out in our issue of 30th July (82 SOL. J. 631), and which has been laid before both Houses of Parliament, as required by the statute and approved. The contents of the order, which is published by H.M. Stationery Office, price 1d. net, need not therefore be further indicated.

Leasehold Property (Repairs) Act, 1938.

THE Leasehold Property (Repairs) Act, 1938, received the Royal Assent on the 23rd June, and came into force immediately. We are glad to see that the Act incorporated a number of amendments upon points which we indicated as requiring attention in our review of the Bill. The object of the Act is to put down a scandal which had recently become serious, namely, the abuse by lessors of the right to enforce repairing covenants, making demands greater than the covenants justified and trading upon the poverty of the average tenant. The scheme of the Act is to make it necessary for the lessor to procure the leave of the court before enforcing such a covenant against the tenant of any relatively small house held on a long lease, much of which is unexpired, provided that the tenant, by notice, invokes the Act.

The Act does not apply to all covenants in all leases. It is confined to cases where the lease was originally one for twenty-one years or more; see definition of "lease" in s. 7 (1). Five years at least of the lease must be unexpired at the date of the notice given by the lessor (s. 1 (1) and (2)). The covenant must be one to "keep or put in repair during the currency of the lease a house," but the Act does not extend to a covenant imposing on the lessee an obligation to put a house in repair upon taking possession or within a reasonable time thereafter (s. 3). The word "house" is not defined, save that s. 4 provides that: "The application of this Act to a house shall not be excluded by reason only that part thereof is used as a shop or office, or for business, trade or professional purposes." The effect of s. 4 in a simple case is, of course, obvious. A medical practitioner's house remains a house in spite of his consulting room being in it. But it is probable that very difficult cases will arise on the question whether a given structure is a house. Thus, for example, it was possible for Eve, J., to hold that a "portable corrugated iron sectional shed," used as an extra classroom for the school in whose garden it stood, was a "house" (*Reckitt v. Cody* [1920] 2 Ch. 452). Further, for the Act to apply, the house must be one of a rateable value of £100 or less.

By s. 1 (2) of the Act, it is provided that no right to damages for breach of a covenant to which the Act applies shall be enforceable by action, unless, not less than one month prior to the commencement of the action, a notice is served by the lessor on the lessee on the lines specified in the Law of Property Act, 1925, s. 146 (1). The "commencement of the action" is presumably the issue of the writ. The period is "one month," which means one calendar month (Interpretation Act, 1889, s. 3). This is a period different from that of "twenty-eight days" also referred to in s. 1 (1) and (2). By s. 7 (2), service of the notice is to be in accordance with s. 196 of the Law of Property Act, 1925, that is to say, it must be in writing, and service need not be personal, provided the section is complied with. In particular, a notice served under s. 1 (2), being a notice served on a lessee, is sufficiently served by being affixed to or left on the land, or any house comprised in the lease (Law of Property Act, s. 196 (3)). Such a notice must have stated on it, in characters not less conspicuous than those used in any other part of the notice, the fact that a counter-notice (later referred to) may be served, the manner in which it may be served, and the lessor's address for service (s. 1 (4)). By the same subsection a similar statement must in future be put on notices served under the Law of Property Act, 1925, s. 146 (1).

After service upon him of a notice, either under the Law of Property Act, s. 146, or under this Act, the lessee may serve on the lessor a counter-notice claiming the benefit of this Act (s. 1 (1) and (2)). Law of Property Act, s. 196, of course, applies to the counter-notice (s. 7 (2)). It is the service of the counter-notice which brings the machinery of the Act into force. The

counter-notice must be served within twenty-eight days of the notice (s. 1 (1) and (2)). If it is not so served, the action may be brought by the lessor, at any time after the end of one month after the service of the notice, if the action is one for damages (s. 1 (2)). If it is not one for damages, but for re-entry or forfeiture, the action is still subject to Law of Property Act, s. 146 (1), that is to say, it can be brought when the lessee has failed "within a reasonable time" after service to remedy the breach.

By s. 1 (3) "Where a counter-notice is served by a lessee under this section, then, notwithstanding anything in any enactment or rule of law, no proceedings by action or otherwise shall be taken by the lessor for the enforcement of any right of re-entry or forfeiture under any proviso or stipulation in the lease for breach of the covenant or agreement in question, or for damages for breach thereof, save by leave of the court."

This sub-section makes it necessary for the lessee to obtain the leave of the court before issuing his writ, or taking out his summons in the county court. It also prevents the exercise of the right of peaceable re-entry without legal process: for, after the counter-notice, no proceedings by action or otherwise can be taken without leave.

Once the lessor has received a counter-notice he has to decide between two horns of a dilemma created by s. 2. It will be remembered that the Law of Property Act, s. 146 (3), gives a lessor the right to recover from the lessee as a debt (in addition to any damages) all reasonable costs and expenses incurred by him in employing a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved under the provisions of the Law of Property Act. Section 2 provides that the lessor is not to recover those costs unless he applies for leave to proceed. On the application for leave the court is to decide whether and to what extent the lessor is to recover them. If, then, the lessor receives a counter-notice, he may remain inactive, in which case he will have thrown away his expenses up to date; or he may apply for leave, in which case he increases the costs whose repayment to him depends on his final success.

Sub-section (5) of s. 1 prescribes the circumstances in which, and only in which, leave to proceed is to be given. The lessor must prove that if the breach is not at once remedied the value of his reversion will be substantially diminished; or that the breach has already diminished it substantially; or that it must be immediately remedied to comply with such things as bye-laws relating to sanitation; or that, if the lessee is not in occupation of the whole house, it is necessary in the interests of some fellow-occupier; or that the present cost of remedy is small, and will probably be "much greater" by reason of postponement; or that there are "special circumstances which in the opinion of the court render it just and equitable that leave should be given."

Sub-section (6) enables the court, in granting or refusing leave, to put either party on terms.

The Act extends to underleases, *mutatis mutandis*, by reason of the fact that s. 7 (1) defines "lessor," "lessee" and "lease" as having "the meanings assigned to them by ss. 146 and 154 of the Law of Property Act, 1925," with an insignificant exception. It does not, of course, extend to Scotland or Northern Ireland (s. 8 (2)). It does, however, apply whether the lease was created or the breach occurred before or after the commencement of the Act, but it is submitted that it does not apply to cases where a notice under the Law of Property Act, s. 146 (1), had already been served before 23rd June, 1938, even if the lessee served a counter-notice within twenty-eight days of the notice. For under the Act itself (s. 1 (4)) a notice under s. 1 (2) or under the Law of Property Act, s. 146, in the circumstances specified in s. 1 (1), is to contain the statement previously referred to, and otherwise "shall not be valid." As it could not be

known till the Act became law that such a statement was necessary at all, let alone what it ought to contain, the Act can hardly be construed to apply to notices served before it came into force.

By s. 6 "the court" is defined as "the county court, except in a case in which any proceedings by action for which leave may be given would have to be taken in a court other than the county court, and means in the said excepted case that other court." By the next sub-section the County Courts Act, 1934, is amended accordingly. By s. 48 of that Act a county court has jurisdiction to deal with actions for the recovery of land where "neither the value of the land in question nor the rent payable in respect thereof exceeds the sum of one hundred pounds by the year." In actions for the recovery of land of a larger value, therefore, the action "would have to be taken in a court other than the county court." It is important to note that the Leasehold Property (Repairs) Act applies to houses of a *rateable* value of £100 or less. Thus, it is quite possible for a single house to be within the Act, but yet not to be within the county court jurisdiction, because the *rent or annual value* exceeds £100. Further, the Act applies to any *house* of under £100 rateable value: therefore, if a lease comprises more than one house, of a total rental or annual value exceeding in the aggregate £100, the Act will apply to any such house whose rateable value is under £100, but the proper court will be the High Court. Again, the county court jurisdiction for actions of contract is only in cases "where the debt, demand or damage claimed is not more than one hundred pounds" (County Courts Act, 1934, s. 40 (1)). Consequently, it seems that if a lessor chooses to demand more than £100 as damages for breach of the repairing covenant, the proper court will be the High Court, even though the rent or annual value is under £100.

Nothing is said in the Act about the procedure for applying for leave. Presumably, rules of court will be made in due course. In the meantime, however, the proper procedure would seem to be by originating motion in the High Court (Annual Practice, 1938, p. 989, notes to R.S.C., Ord. 52, r. 3), or by originating application in the county court (County Court Rules, 1936, Ord. 6, r. 4).

Company Law and Practice.

MOST statutory companies, such as water companies or gas companies, have incorporated in their constitutions the provisions of the Companies Clauses Acts, and a great number of such companies, when authorised to borrow money, have done so by the issue of debenture stock under the provisions of

Debenture Stock under the Companies Clauses Act, 1863.

Pt. III of the Act of 1863. The right to do so arises in this way: If the company is authorised to borrow money on mortgage or bond it may do so in accordance with the provisions of the Companies Clauses Consolidation Act, 1845. If the company is authorised to create and issue debenture stock it may do so under the provisions of Pt. III of the Act of 1863; and by s. 3 of the Companies Clauses Act, 1869, if the company has power to raise money on mortgage or bond, but has not power to create and issue debenture stock, it can do so subject to the provisions of the Act of 1863. Consequently every statutory company which has power to borrow and give security for the money borrowed may issue debenture stock, and very many of them having done so, it is of interest to examine the provisions of Pt. III of the 1863 Act in order to ascertain the nature of such debenture stock. Section 22 authorises the creation and issue of debenture stock "subject to such conditions and with such rights and privileges as the company thinks fit." Section 23 provides that the debenture stock with the interest thereon shall be a charge upon the undertaking of the

company and shall be transmissible and transferable. Section 24 provides that the interest on debenture stock shall have priority over all dividends or interest on any shares in the company, and shall rank next to the interest on mortgages or bonds created prior to it, but that the holders of the debenture stock shall have no priority among themselves. The next two following sections provide for the enforcement of payment of arrears of interest by the appointment of a receiver; and s. 27 makes the arrears of interest recoverable in an action against the company. The remaining provisions of that part of the Act, with the exception of s. 31, referred to below, are mere machinery and we need not now concern ourselves with them. It is of importance, however, to examine a little more closely the only two remedies provided by the Act for non-payment of interest and to note that there is no remedy for non-payment of principal, for indeed there is no provision for repayment at any time of the principal money borrowed.

In *Re Bury Port & Gwendreath Valley Railway Co.*, 34 L.J. Ch. 710, there is a statement by Kay, J., as to the nature of debenture stock in this connection, which is of some interest. The facts of that case need not be gone into, for it was concerned with a question of priorities of mortgages and debenture stock respectively under the Companies Clauses Acts. In his judgment, however, Kay, J., says: "The Act of 1863 contemplates a different kind of security—debenture stock. The principal distinction between this and the mortgages authorised by the Act of 1845 is that the holder, instead of being the lender of a sum of money which is to be repaid, obtains a charge upon the company's undertaking of the interest of his loan in the nature of a perpetual annuity, whereas the mortgagee or bondholder would be entitled to repayment of his capital at the time fixed by the instrument."

The functions of the receiver as prescribed by the Act are to receive the whole or a competent part of the fees or sums liable to the payment of the interest until all arrears and costs, etc., are fully paid. By s. 23, as has been said, the debenture stock is to be a charge on the undertaking. The word undertaking is not defined in the 1863 Act, but by s. 2 of the Act of 1845 it is defined as meaning the "undertaking or works of whatever nature which shall by the special Act be authorised to be executed." Whatever, therefore, is the exact nature of the charge, it will be seen that the word "undertaking" has a more limited significance than it would have in the debenture of an ordinary company.

The above are, greatly summarised, all the relevant provisions in determining the nature of the debenture stock and the position is made more difficult by the fact that in the early days of the reign of Queen Victoria it was never apparently contemplated that any statutory company would cease to supply gas or whatever its commodity might be, and there are no provisions in any of the Acts relating to such companies for winding up or bringing to an end the debenture stock.

The first thing that must be realised in considering this stock is that it has nothing whatever to do with debenture stock or debentures of a company under the Companies Act, 1929, and, indeed, in *Attree v. Hawe*, 9 Ch. D. 337, James, L.J., says: "It seems to be called debenture stock, *lucus a non lucendo*, because it is anything but a debenture. There is no debt, except indeed as to annual interest; the capital cannot be called in and cannot be paid off. It is a right to a perpetual annuity payable out of the concern. There is no conveyance or assignment of anything to the stockholder or to any trustee for him." Later in his judgment the lord justice says that the only thing really chargeable is the net earnings of the company, the same fund out of which, if sufficient, the dividends and interest of the other stockholders are to be paid. It will thus be seen that the "charge on the undertaking" referred to above is in reality nothing of the sort: it is not a fixed charge and it is not a floating charge,

and those words in the Act do not by themselves confer any rights on debenture stockholders. Their only rights are those specified in the Act or in any special Act, and those conferred by the 1863 Act are, as we have seen, to sue for arrears and to appoint a receiver of the income of the undertaking until the arrears are paid off.

In the case of *Attree v. Hance*, James, L.J., refers to s. 31 of the Act of 1863, which provides that debenture stock shall in all respects, not otherwise by or under that or the special Act provided for, be considered as entitling the holders to the rights and powers of mortgagees of the undertaking other than the right to require repayment of the principal money, and he says that such rights or powers do not extend to taking the land or entering on the land or in any way interfering with the ownership, possession or dominion of the statutory owners of the undertaking. That is the case for, as was first decided in *Gardner v. London, Chatham & Dover Railway Co.*, L.R. 2 Ch. 201, the undertaking of a railway company, and the decision applies equally to all other public utility undertakings, which is pledged as the security for money borrowed, is the going concern created by the Act which cannot be broken up or interfered with by a mortgagee; and further, as Parliament has entrusted the management of the undertaking to certain persons, the court will not interfere by appointing a manager at the instance of mortgagees; nor will it in the case of debenture stockholders: *Blaker v. The Herts & Essex Waterworks*, 41 Ch. D. 399.

It is, indeed, difficult to see what the effect of s. 31 of the 1863 Act is, and, as will be seen, there may be a number of questions arising out of debenture stock under that Act. It is at least plain that the rights of the debenture stockholders are very much more restricted than those of debenture or debenture stock holders issued by a company under the Companies Act, and in *Cross v. Imperial Continental Gas Association* (1923), 2 Ch. 553, it was held that where a company had power to sell any part of its undertaking the holders of debenture stock issued under the Companies Clauses Acts could not, the interest not being in arrear, prevent the distribution of the capital profit arising from such a sale to the members of the company. The one thing, therefore, which appears from these cases, is that when debenture stock under the Act of 1863 is under consideration all the rights of debentures under the Companies Acts should be banished from the mind.

A Conveyancer's Diary.

[CONTRIBUTED.]

White v. Bijou Mansions Ltd. [1938] Ch. 351; 82 SOL. J. 135, was a case which went up to the Court of Appeal. In the court of first instance it was **Restrictive Covenants.—II.** important as a decision on L.P.A., s. 56, and on the Land Registration Act. On appeal, however, the main point was that the court refused to find that there was a "building scheme," though it looked rather as if there might be, owing to the fact that it could not be shown that the parties intended that the covenants should be enforceable by subsequent owners *inter se*.

There is one point in the case, however, which, though apparently small, contains the possibility of a serious confusion of thought. Counsel for the appellant (top of p. 355) seem to have sought to draw a distinction between "building schemes" and other sets of circumstances in which, though there is no "building scheme," there is a "local law." They appear to have said that *Nottingham Patent Brick & Tile Co. v. Butler*, 15 Q.B.D. 261; 16 Q.B.D. 778, is an instance of the latter sort of case, and to have cited a passage in *Rogers v. Hosegood* [1900] 2 Ch. 388, 397. The Master of the Rolls seems to have given some implied countenance to the

distinction by speaking of *Elliston v. Reacher* [1908] 2 Ch. 374, as "(a building scheme case)" in implied antithesis to other cases of local law.

I think that there is some slight confusion here, though the matter is really one of words. The underlying principle of all cases of local law is that where land is purchased by a number of persons on the understanding that each will use his plot in accordance with certain regulations, which are made for the benefit of all the lots, "community of interest necessarily . . . requires and imports reciprocity of obligation": *per* Lord Macnaghten in *Spicer v. Martin*, 14 App. Cas. 12, at p. 25. In such a case there is what his lordship called "an estate bound by one general law," or a "local law" as it has otherwise been described. The local law is not necessarily one which specifies requirements, aesthetic or constructional, of projected buildings. It may well relate only to the user of existing buildings or merely to the user of land that is not built upon. Thus, in *Torbay Hotel Ltd. v. Jenkins* [1927] 2 Ch. 225, Clauson, J., said: "The present is not, of course, the case of a building scheme in the ordinary sense: the Cary Estate owners were not setting out to deal with vacant land and to parcel it out in plots for sale . . . [But in the circumstances] it appears to me that the principle as regards the common intention of the parties on which the building scheme cases proceed would apply to the present case, notwithstanding that the circumstances differ from those of the ordinary building schemes" (at p. 241). But in practice much the commonest sort of case is that where a common vendor lays out his estate in lots for building purposes, and imposes covenants regulating the character of the buildings. Further, the best known judgment on this branch of the law is that of Parker, J., in *Elliston v. Reacher*, which was a building scheme case in the narrow sense. Hence, most practitioners normally use the expression "building scheme" to cover both the genus, local law, and the species, building scheme. I do not think that this distinction has been clearly expressed in any of the reported cases, but equally I do not think that there is anything in the cases inconsistent with it. The passage from *Rogers v. Hosegood*, cited by counsel in *White v. Bijou Mansions*, is as follows: "Take the cases of building schemes. There is no express assignment of the benefit of the covenants, but it is held that the true intent of the parties, and consequently the true construction of the covenant, is to be found by applying the words of the deed to the surrounding circumstances. A similar conclusion has been arrived at in cases where there is no general scheme, but various persons enter into similar covenants with reference to lands that lie adjacent to one another. It is sufficient for me to refer to *Nottingham Patent Brick & Tile Co. v. Butler*; *Western v. Macdermott*, L.R. 1 Eq. 499; 2 Ch. 72; *Whatman v. Gibson*, 9 Sim. 196; *Coles v. Sims*, Kay 56" (*per* Farwell, J., at p. 397). The point of this passage is that the learned judge was explaining that the meaning of covenants is a matter of construction to be ascertained with reference to the surrounding circumstances, a matter well brought out by cases of local law. He was not particularly concerned to distinguish building schemes from other cases of local law, and I would suggest that all he meant by "cases where there is no general scheme" was cases where there is no building scheme in the narrow sense. The whole question, however, seems to be unfortunately confused by the terminology in common usage, and it would be desirable if a neat term for the whole genus were coined, leaving "building scheme" for the species.

A year ago practitioners were suffering from considerable bewilderment about the enforceability of restrictive covenants, which arose out of the decision of Clauson, J., in *Re Ballard* [1937] Ch. 473; 81 SOL. J. 458, a case followed almost immediately by Bennett, J., in *Zetland v. Driver* [1937] Ch. 651. I do not think that those cases were fully understood at that time, but the whole subject has since become

much clearer by reason of the reversal of the latter decision in the Court of Appeal (1938), 82 SOL. J. 293.

In *Re Ballard* the annexation was to the "Childwickbury Estate," *simpliciter*. This estate comprised an area of nearly 2,000 acres, but the covenants were imposed upon an area of less than 20 acres at its fringe. Clauson, J., held that the benefit of an annexed covenant does not run unless it is annexed to land which it can be said to "touch and concern." In *Re Ballard* the covenant, of course, could not "touch and concern" more than an insignificant fraction of the Childwickbury estate. As the annexation was not to any fraction at all, but to the estate as a whole, it failed, because the covenant could not conceivably be said to "touch and concern" the whole.

In consequence of this decision two schools of thought grew up: one of them said that *Re Ballard* was simply wrong. The other, that *Re Ballard* was right, but that it was a salutary decision as tending to the destruction of covenants, of which there were too many. It turns out that neither of these schools were right. What was wrong was the decision of Bennett, J., in *Zetland v. Driver*, which has been reversed on appeal. But the judgment of that court is careful not to overrule *Re Ballard*: that case is distinguished from *Zetland v. Driver* on the ground that in the latter case the annexation was not only to the whole of the Zetland estates at Redcar, but also to their each and every part. But for this element the two cases were exactly similar. The distinction is, however, vital, because in *Zetland v. Driver* the plaintiff had a part of the Zetland estates which certainly was touched and concerned, namely, the adjacent plot. The distinction is not a mere quibble, since the man who annexes a covenant to his whole estate is one who wishes none but his successors in that position to have the right to enforce; while he who annexes it also to every part is giving that right to every purchaser from him of a part touched and concerned.

The position, therefore, is now perfectly clear. Where the annexation is to parts, the owner of any part touched and concerned is a competent plaintiff; where it is only to the whole, none but the owner of the whole can enforce, and he only if the whole as a whole is touched and concerned. In these circumstances, it is not the case that many covenants will be destroyed by *Re Ballard*, because annexation to the whole only, which was the vital factor in that case, is comparatively rare.

Moreover, it is, I think, possible that some covenants within *Re Ballard* can be saved if the proper steps are taken. I do not guarantee that the proposed method will prove a success, but I think it is worth trying. I would suggest that where a purchaser finds that his vendor has himself taken such a covenant, he should secure the assignment to him of its benefit, along with the land he is purchasing, and then rely on *Miles v. Easter* [1933] Ch. 611. For an assignee to be able to enforce, there must be "ascertainable land," and what better sort of ascertainment can there be than the attempted annexation? This method will not work if the land has ever been assigned without the covenant, as it is laid down in *Miles v. Easter* that the covenant and the land must never be separated. But I do not see why it should not do so if the land and the covenant have never been severed, since it has never been suggested that the "ascertainable land" must be land touched and concerned in the strict sense in which those words are used in *Re Ballard*.

The rapid growth of the Legal & General Assurance Society Limited—and life assurance generally—is indicated by the fact that the Society issued its 200,000th ordinary life policy on the 18th August. The Society, established in 1836, issued policy No. 100,000 eighty-seven years after, in 1923, and has, therefore, taken only fifteen years to double that number.

Landlord and Tenant Notebook.

It is interesting and instructive to compare the decisions in *Plummer v. Ramsey* (1934), 78 SOL. J. 175, **L.T.A., 1927, s. 18 (1), and Fixed Sums for Dilapidation.** and *Moss Empires, Ltd. v. Olympia (Liverpool), Ltd.* (1938), 82 SOL. J. 564, both of which deal with the possible effect of L.T.A., 1927, s. 18 (1), on leases which provide for payments of specified sums by covenantors as an alternative to fulfilment of covenants to repair.

The sub-section enacts that damages for a breach of a covenant of that description shall in no case exceed the amount (if any) by which the value of the reversion is diminished owing to the breach.

In *Plummer v. Ramsey* the defendants were bound by covenants which obliged the tenant (whose personal representatives they were) to repair and also to paint the premises in the last month of the tenancy. Another clause ran: "The lessor may at his option elect that the lessee shall at the expiration or sooner determination of the said tenancy pay to the lessor the sum of £— in lieu of painting and decorating the said premises in the last year or at the sooner determination thereof, and upon the lessor notifying the lessee of such election the lessee shall pay to the lessor the said sum of £— which the lessor shall accept in full satisfaction and discharge of all liability and obligation of the lessee hereunder for dilapidations."

It will be observed that the various provisions referred to do not hang together as well as might be expected. There is a general covenant to repair, a particular one to paint in the last month; but the clause set out talks first about painting in the last year, then provides for a payment in the alternative, and concludes by almost casually extending the function of that payment to the extinguishment of the obligation under the general covenant.

However, the lessor notified his election shortly before the term ended (it expired naturally) and claimed the payment in the action. The defence was that the sum was a penalty for failure to discharge an obligation of which L.T.A., 1927, s. 18 (1), had relieved the obligor. Branson, J., held that the sum was not a penalty or liquidated damages, but one to which the plaintiff's election entitled him.

The terms of the lease in *Moss Empires, Ltd. v. Olympia (Liverpool)*, were more elaborate. A lengthy clause providing for repairs by the tenants was divided into a number of sub-clauses. Of these, the fourth obliged them to keep the premises in substantial repair, externally and internally; the fifth and sixth provided for periodic painting of the inside and outside respectively; the eighth, which seems to have been an afterthought, was a covenant to keep the premises in good and tenantable order; while the seventh ran: "In the performance of the covenants in sub-clauses (iv), (v), (vi) and (viii) herein contained to expend during each year of the said term on such repairs and decoration a sum of £500 and at the end of each year of the term to produce to the lessors evidence of such expenditure or to pay to them at the end of each such year a sum equal to the difference between the amount so expended and £500." A further provision was that the expenditure should "be accepted by the lessors in full satisfaction of the covenants (iv), (v), (vi) and (viii) so that if in any one year a larger sum than £500 shall with the consent of the lessors be expended by the lessees for the like purpose the amount of such expenditure in excess of £500 shall be taken in or towards satisfaction of the lessees' future liability under this sub-clause."

It may be mentioned here that the premises in this case were a theatre let at an annual rent of £3,250, so that the £500 is not out of the way, the proportion corresponding roughly to the statutory deduction from gross value which is fixed by the Rating and Valuation Act, 1925, Sched. II,

Pt. I. No doubt by applying a sufficient number of coats of sufficiently expensive paint the tenants could always have made the required expenditure even when no structural repairs became necessary, but in fact they spent little or nothing for some three years, and the plaintiffs brought the action for damages for breach of covenant or, alternatively, for money due thereon. There was no evidence that the breach had diminished the value of the reversion.

At first instance, Hilbery, J., found in their favour, holding that the contract was "for the performance of repairing obligations," but that these were to be performed either by expenditure of money on repairs or by expenditure of some money on repairs and payment of the balance, and the action for failure to pay the money was distinct from that for breach of covenant to repair. In the Court of Appeal this decision was reversed by a majority, Greer, L.J. being the dissentient.

In his judgment, Slesser, L.J., with whom MacKinnon, L.J., agreed, said the whole clause was a repairing covenant and sub-cl. (vii) merely quantified the obligations under the other four sub-clauses to which it (sub-cl. (vii)) referred. A claim under that sub-clause could not be framed in debt; at the highest it was a claim for liquidated damages, to which, in the absence of evidence of injury to the reversion, L.T.A., 1927, s. 18 (1), afforded a complete answer.

Are *Plummer v. Ramsey and Moss Empires, Ltd. v. Olympia (Liverpool), Ltd.* reconcilable or irreconcilable? Let us first consider what relevant features they have in common.

In both cases the covenantor under a covenant to repair might, in certain circumstances, be relieved of his liability. In both cases if he were so relieved he become contractually liable for payment of a fixed or ascertainable sum of money and only the statute could then excuse him.

If that were all, the decisions would conflict. So it behoves us to inquire what distinguishes the circumstances of the one from those of the other.

The fact that in the one case the action was brought after, in the other during, is not at first sight material, because L.T.A., 1927, s. 18 (1), covers both. But it may be important that in the case in which the landlord succeeded the instrument clearly contemplated and limited its scope to damages recoverable at or after the end of the term.

However, in both cases, there was a contingent liability fixed by the lease to pay a certain sum of money, and in both cases that liability would be substituted for some liability in respect of repairs.

But when we examine the differences between the two sets of facts, we see first that the contingency in the case of *Plummer v. Ramsey* depended on the volition of the covenantee, that in *Moss Empire, Ltd. v. Olympia (Liverpool), Ltd.* on the conduct of the covenantor. In the earlier case notice had to be given as a condition precedent to any claim, in the recent case the right to the money arose automatically. In this way a distinction can be drawn as the result of which one covenantor is not and the other is protected by L.T.A., 1927, s. 18 (1).

The "Notebook" discussed the question of evading that enactment in Vol. 77, at p. 479, and devoted another article to its scope in Vol. 80, p. 220. In the former, a clause not unlike that which was subsequently adjudicated upon in *Plummer v. Ramsey* was examined, and it was suggested that the device adopted would not succeed. *Plummer v. Ramsey*, as has been observed, is not wholly satisfactory, because the relevant part of the lease commenced by substituting a liability for cash for a liability to decorate (whether decorative repairs fall within L.T.A., 1927, s. 18 (1), was gone into in the second mentioned article) and more or less casually went on to absolve the tenant from liability for dilapidations. And the recent case has at least shown a divergence of judicial opinion, the judgment at first instance having been reversed by a majority decision. I should, perhaps, mention that there can be no question of an attempt to evade the statute

in this case, as the lease was granted in 1924. And the authority, in its present state at all events, suggests that if anyone does want to get round the sub-section he might give the judiciary furiously to think by drafting a lease which provided for rebates of rent according to the condition of the premises.

Our County Court Letter.

THE CONTRACTS OF FOOTBALLERS.

In *Jones v. Keighley Rugby League Club*, recently heard at Keighley County Court, the claim was for damages for breach of contract. The plaintiff's case was that, on his entering the service of the club, as a professional footballer, it was agreed that he should be paid 30s. a week during incapacity, while he was available for the first team. On Good Friday, 1936, in a match at Odsal, the plaintiff tore the semi-lunar cartilage of one knee. A week later he went with the rugby team to Australia, where he played in seven or eight matches. Treatment was given to his knee on the voyage, and during the tour, and the plaintiff continued to play for the club on his return. Early in 1938, however, the trouble recurred, and the cartilage was removed on the advice of the plaintiff's doctor. The defence was that the plaintiff's incapacity was not due to the injury at Odsal in 1936, but was caused by an injury received during the Australian tour. There was no cartilage trouble in 1936, as the injury was to the lateral ligament. After three weeks' treatment, the plaintiff had no further trouble in that season. On his return from Australia, however, he gave a history of his knee having locked on the tour, and no mention was made of any injury at Odsal. The liability was therefore upon the Rugby League, and not upon the club. His Honour Judge Frankland gave judgment for the plaintiff for £17 10s. and costs.

RECOVERY OF POSSESSION OF FARM.

In a recent case at Walsall County Court (*Holcroft's Trustees v. Wassell*) the claim was for possession of a farm, and £60 as damages for breach of covenant. The plaintiff's case was that, under an agreement of the 4th November, 1936, the farm was let to the defendant and his late mother, as joint tenants, at £60 a year. A condition was that the farm should be cultivated according to the principles of good husbandry, but, for the last two seasons, it had hardly been farmed at all. The farm comprised thirty-four acres and was mixed. Large quantities of thistles, docks and squitch were growing on ten acres of arable land. The defendant had made drills for putting in potatoes, two months late, and was also late in sowing spring oats, whereby the crops would be choked by weeds. The delay was not excusable by the drought. One field was carrying two years' filth, and notice to quit was given in March. No claim was anticipated from the defendant under the Agricultural Holdings Acts as the plaintiffs had suffered from the deterioration of the farm. The defendant's case was that, since his mother's death, he had suffered from lack of capital and had had no one to help him. He had always paid the rent, but it had been refused since the proceedings began. His Honour Judge Tebbs made an order for possession on the 29th September, without costs. The claim for damages was abandoned.

THE RESTRICTIVE COVENANTS OF TRANSPORT CONTRACTORS.

In a recent case at Walsall County Court (*G. H. Austin and Sons v. Layton*), the claim was for damages and for an injunction in respect of the breach of an agreement that the defendant would not within ten years, directly or indirectly, enter into competitive business within seventeen miles of Cannock, or ten miles of any place operated by the plaintiffs. The defendant, on the 13th April, 1938, had sold to the

plaintiffs his business as a motor coach proprietor for £1,750. The sale included three motor coaches, the goodwill and certain stage services. Nevertheless on the 14th May, the defendant drove a party from Darlaston to Wrekin; on the 6th June he assisted in loading a coach from Bridgtown and waved to the plaintiffs' agent from the coach; on the 18th June the defendant's wife assisted with a coach running from Cannock. The plaintiffs' case was that they took over the Darlaston booking with the business and had sent a coach to fulfil it, but they were forestalled by the defendant. His interference also prevented them from obtaining the other two bookings. The driver of the plaintiffs' coach to Darlaston gave evidence that, while waiting to pick up the party, he saw the defendant drive up in another firm's coach. The organiser of the party then sent the plaintiffs' driver away without any passengers. The defendant's case was that, in the first place, he was employed by the plaintiffs and was booking on their behalf. Not having had a definite reply from them, he engaged another firm's coach in order not to disappoint the customers. His Honour Judge Tebbs granted the injunction with costs.

Reviews.

The Country Banker's Handbook. By J. GEORGE KIDDY. Eighth Edition, by MAURICE MEGRAH, Secretary of the Institute of Bankers. 1938. Crown 8vo. pp. iv and (with Index) 200. London: Waterlow & Sons, Ltd. 7s. 6d. net.

The new edition of this handbook has been revised where necessary and brought up to date. It contains three sections dealing respectively with the rules and practice of the Bank of England, the London Bankers' Clearing House, and the Stock Exchange. There is also a section containing useful miscellaneous notes on various matters, including pensions, annuities, Chancery dividends and passports.

Books Received.

Tolley's Complete Income Tax Chart-Manual. 1938-39. Twenty-third Edition. Compiled by CHAS. H. TOLLEY, A.C.I.S., F.A.A., Accountant. 1938. London: Waterlow and Sons, Ltd. Price 4s. post free (N.D.C. Supplement 8d. extra).

Impossibility of Performance in Contract. By RUDOLF GOTTSCHALK, Dr. Jur. Utr., LL.M. (Lond.), of Gray's Inn, Barrister-at-Law. 1938. Demy 8vo. pp. xvi and (with Index) 146. London: Stevens & Sons, Ltd. 7s. 6d. net.

A Treatise on the History and Law of Fiduciary Relationship and Resulting Trusts. By ERNEST VINTER, M.A., LL.M. (Cantab.). Second Edition, 1938. Demy 8vo. pp. xx and (with Index) 415. London: Stevens & Sons, Ltd. £1 1s. net.

Companies. Forty-seventh General Annual Report by the Board of Trade. 1938. London: H.M. Stationery Office. 4d. net.

The Journal of Comparative Legislation and International Law. Third Series. Vol. XX. Part III. August, 1938. Edited by F. M. GOADBY, D.C.L. London: Society of Comparative Legislation. Annual Subscription, £1 1s.

Social Service Review. Vol. XIX. No. 7. July, 1938. London: The National Council of Social Service. Price 6d.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Land and Estate Topics.

By J. A. MORAN.

In spite of the holiday attractions elsewhere, the market for real estate continues to appeal to investors and speculators who, it is evident, keep a good look-out at a time when auctioneers are supposed to be enjoying their annual holiday. But while business, under the hammer, is quiet, private negotiations continue to meet with success. This promises well for the autumn season, for which, so far, there is an excellent programme.

The sale of Hornby Castle, near Lancaster, recalls to mind a story of its change of ownership many years ago. The purchaser, head of a family which built up a great business at Black Wyke Mills, Queensbury, on the heights above Bradford, affected a style of dress which, when he visited the local "pub" on the day of the auction, caused the landlord to direct him to the cheaper bar. On hearing that the stranger came from Bradford, the landlord joined him there later. "They do say," he remarked, "that one of them wool chaps from Bradford has bought the estate, so now I have a new landlord." "Yes," said the stranger, "and I'm him."

The recent Bute sale has been alluded to in the daily press as a "£20,000,000 property deal." As a matter of fact, this is just what it was not. The transaction was in respect of ground rents amounting to about £150,000 arising from 20,000 houses, 1,000 shops, 250 public houses, theatres, cinemas and a part of Cardiff Docks. The leases have a long time to run.

When the composition of the Syndicate that recently purchased the major portion of the Bute estates, in and around Cardiff, was disclosed, I was not surprised to find that big insurance interests were involved. Carefully chosen, real estate investments are rightly held to be suitable for a fair proportion of the large sums for which insurance companies have to find a more or less permanent home.

The little girl, with a few of her friends, went to a "mock auction" at the seaside. She bought a watch, and asked the man in authority to send it to her father. The surname was all right, but as there was a difficulty in determining the Christian name, he asked her what her mother called him. The reply he got was: "Mother does not call him anything." Evidently it was a happy home.

Mr. B. W. Adkin, Principal of the College of Estate Management, had a very cheery report to read at the annual distribution of prizes. The total number of pupils enrolled during the year ending 31st March last amounted to 2,617, which exceeded the number enrolled during the previous year by over 400 students, and was the largest entry yet recorded.

Mr. Adkin was eager to give credit to the members of his staff, instructors, assistants and others, but on him fell the biggest responsibility, and the results proved how well he carried out his trust.

During July, local authorities declared clearance areas comprising 3,101 houses, representing the displacement of 11,027 persons, as compared with 2,105 houses and a displacement of 8,941 persons in June. At the end of June there were as many as 75,010 houses under construction, as compared with 73,270 at the end of May, and 64,108 at the end of June last year. New houses approved during July numbered 7,712, as compared with 4,957 in June, and 7,379 in July, last year.

The rents for grouse moors this season range, it is reported, from £1,000 to £5,000. A century ago Lord Malmsbury was offered a splendid site of country in the Scottish Highlands, with grouse, deer and fishing of the best, all for a rent of £25. About the same time there were parts of the Highlands over which a stranger could fish and shoot, as much as he liked, without interruption, and without having to pay anything at all, the owners of the land not having then realised the value of sporting rights.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped, addressed envelope is enclosed.

Costs—SOLICITOR-TRUSTEE.

Q. 3572. A is solicitor-trustee to estate of B. No solicitor's charging clause is in will. Is A entitled to charge a sum for overhead office expenses, e.g., clerks' time, including a journey by a clerk to London? It is admitted that nothing can be charged for profit costs, but in our view a reasonable sum to cover overhead charges, including clerks' time, is a disbursement and does not come under the head of profit costs.

A. It is an established principle that a solicitor-trustee cannot charge the estate anything beyond his actual out-of-pocket expenses, unless there is a "professional charges" clause in the will. What constitutes actual out-of-pocket expenses is a question of fact, but there seems little doubt but that the expenses of a clerk engaged on the work of the trust are proper expenses to charge against the estate. The clerk's salary will have to be apportioned, for instance, on a time basis, and his actual travelling expenses added. The question of charging overhead expenses is a difficult one, but there is nothing against the solicitor charging something for office expenses. He might find it difficult, however, to rebut a suggestion that he is making a profit out of this, and the better course, it is thought, would be to waive this item, unless the work of the trust is comparatively large. Any expense which can, however, be specifically allocated, should be charged against the trust.

Agricultural Credits.

Q. 3573. By virtue of the Agricultural Credits Act, 1928, a tenant farmer gave a bank an agricultural charge on his farm stock and other agricultural assets and under the terms of the charge the bank have recently appointed a receiver. By arrangement the landlord has released the tenant and a new tenant is about to take over the farm. The usual incoming valuation has been made and out of the amount of the tenant right valuation payable by the new tenant the landlord proposes to deduct what is due to him for dilapidations and pay the balance to the receiver. The receiver contends that the bank is entitled to the whole of the valuation moneys and that the landlord has no right to "set off" his claim for dilapidations. Is he correct in this?

A. In view of the definition of "other agricultural assets" in the Agricultural Credits Act, 1928, s. 5 (7), the bank has a prior charge on the amount of the tenant right valuation. The landlord's right to a sum in respect of dilapidations is therefore postponed, and he is not entitled to deduct that sum and pay the bank the balance only. No right of set-off, therefore, exists, and the landlord is not correct in his contention.

Liability for Boiler Explosion.

Q. 3574. Clients of mine are the owners of a block of twenty-seven flats. In each flat there is a gas-boiler, and each tenancy agreement provides that the tenant will keep the internal fixtures (which, of course, include the gas water-heater) in such good and sufficient repair as they were at the commencement of the tenancy, damage by fire excepted. My clients wish to know whether it was their liability to insure against explosion and escape of gas in regard to the boilers. My advice to them was, that it appeared that the tenant was liable for any damage to the heater by explosion, and if, through his negligence, the boiler exploded, the tenant

would be liable for any consequential damage, but that if the boiler exploded and damaged the structure of the building or any other flat, or injured any other tenant, my clients would be liable as the boiler was their property, and they would be responsible for any damage occasioned thereby. (This advice was on the basis of the ruling in *Rylands v. Fletcher*.) I informed my clients that they had, however, a right of indemnity against the tenant, who, by his negligence, caused the explosion, but this indemnity would in most cases be useless. I shall be obliged if you will kindly let me know whether the foregoing is correct.

A. The questioner's clients do not keep the gas water-heaters under their own control, and therefore they are not liable for damage caused by any defect in the management of the gas-boilers by the respective tenants. The actual tenant whose boiler explodes is liable on the principle of *Western Engraving Co. v. Film Laboratories Ltd.* [1936] 1 All E.R. 106. As between the landlords and the various tenants, the gas water-heating system is brought on to the property for their common benefit. The case, therefore, falls within the exceptions to *Rylands v. Fletcher*, and the landlords are not liable.

Mutual Powers of Appointment—FRAUD OR THE POWERS.

Q. 3575. A, by his will, created a trust fund in favour of his children for life. He left him surviving four daughters, two married—one only has children—and two unmarried. By cl. 11 of his will ("After the death of such daughter my trustees shall hold such share and the future income thereof in trust for all or such one or more exclusively of the others or other of her sisters and the children of such sisters and the child of her deceased brother if more than one in such shares as such daughter shall from time to time by any deed or deeds revocable or irrevocable or by will or codicil (without transgressing the rule against perpetuities) appoint and in default of and subject to any such appointment in trust for such person or persons as would have been entitled thereto under Pt. 4 of the Administration of Estates Act, 1925, at the death of such daughter had she died possessed thereof intestate and without having been married such person if more than one to take in the shares and manner in which they would have taken under the said part of the said Act") he gives his children a special power of appointment in respect of their share in the trust fund. It is observed that the daughters were not given any power of appointment in favour of their own children, if any, but it gives them a power of appointment in favour of sisters and the children of sisters. It has now been suggested that an unmarried daughter should exercise her power of appointment, by irrevocable deed, in favour of the children of a sister, and that the mother of these children should exercise her power of appointment in favour of the sister exercising the power of appointment in favour of her children. Can there be any objection to this arrangement being carried out? If so, would you please give authorities.

A. We have not been able to trace any case directly in point, and this is not surprising because the will is of a very unusual nature. We express the opinion that the arrangement is not "fraudulent" for the exercise of each power does not result in any "fraudulent" application of the funds subject to the power exercised. Further, family arrangements are favoured by the court.

To-day and Yesterday.

LEGAL CALENDAR.

22 AUGUST.—It does not take much motive to make a murder. One day in 1846 John Smith, the young cook at the well-known Guildhall Coffee House in London, was preparing lunch with Susan, the kitchen maid. He was trussing ducks, and she was cutting beans. They were having an argument about a woman who had bought some things from him and whom he had accused of not paying him. Susan told him he was not acting like a man in talking to the poor woman as he had. They exchanged angry words, and he slashed her across the throat with his knife. She died in a few minutes. He was convicted of murder at the Old Bailey on the 22nd August, 1846, but was afterwards respite on the ground of his good character and the provocation he had received.

23 AUGUST.—Once upon a time there was an old barrister called Brierley, who was the terror of the criminal courts. His flowing white beard made him a conspicuous figure, and he believed that it was his mission to clear the courts of "the wicked and cheating attorneys." He would constantly interrupt the proceedings to explain that when he had accomplished his work, the sons of noblemen and gentlemen would be able to practice at the Bar. In a red bag he carried a collection of flints which he would pile in front of him and when ordered to put them away he would explain to the judge that he had merely brought them for his personal protection. On the 23rd August, 1869, it was announced from the Bench that he had been pronounced insane and sent to Hanwell.

24 AUGUST.—On the 24th August, 1764, John Gore, Solicitor-General of Ireland, became Chief Justice of the King's Bench there. Not long afterwards he was raised to the peerage with the title of Baron Annaly of Tenelick. He continued in his place for nearly twenty years, dying in 1784 at the age of sixty-six.

25 AUGUST.—On the 25th August, 1842, John Bean, a youth of seventeen, so small and deformed that his head scarcely reached above the dock, was tried at the Old Bailey for attacking Queen Victoria with a pistol while she was driving to the Chapel Royal on Sunday. The weapon, which did not go off, was loaded with some pieces of gravel and broken bits of tobacco pipe. He was convicted of an attempt to harass, vex and grieve his Sovereign, and Lord Abinger, in sentencing him to eighteen months in Millbank Prison, delivered a long and eloquent address, declaring that he knew "no misdemeanour more affecting the public peace of the Kingdom, of greater magnitude or deserving more serious punishment."

26 AUGUST.—On the 26th August, 1880, a man called Cordigliani was sentenced at Rome to five years' imprisonment for assault in the Chamber of Deputies.

27 AUGUST.—On the 27th August, 1667, Evelyn records in his diary: "Visited the Lord Chancellor to whom His Majesty sent for the Seals a few days before. I found him in his bedchamber very sad. The Parliament had accused him and he had enemies at Court especially the buffoons and ladies of pleasure because he thwarted some of them and stood in their way. I could name some of the chief. The truth is he made few friends during his grandeur among the royal sufferers but advanced the old rebels. He was, however, though no considerable lawyer, one who kept up the form and substance of things in the nation with more solemnity than some would have had."

28 AUGUST.—On the 28th August, 1907, the Act establishing the Court of Criminal Appeal received the Royal Assent. The misfortunes of the wrongly convicted Adolf Beck were the proximate cause of a reform the need

for which had been apparent for more than two centuries. During 1908 no less than eighteen convictions were quashed, and in fourteen cases sentences were reduced.

THE WEEK'S PERSONALITY.

A man who could succeed in throwing two paving stones among the deputies standing on the floor of the Italian Chamber is certainly worth a second glance and even fifty years after his exploit Cordigliani, the revolutionary tailor of Viterbo deserves a commemoration. This Italian Simon Tappertit, somewhat ahead of his time perhaps, in his contempt for Parliamentary institutions, declared that he bore no ill will against any individual deputy, but aimed at them all generally and impartially. At his trial his friends spoke up for him as best they could. Overbearing and excited in his conduct, imbued with an overweening sense of his own importance, he had appeared to them plainly *mezzo matto*. Even his sweetheart admitted that he was very presumptuous and thought himself a great deal better than he was. The doctors attributed his trouble to chronic affection of the heart. All this might have explained his rather extravagant vagaries which had caused him so to neglect his trade that in the end he could not pay his subscription to his Republican Club, but there was a darker side to the evidence and a hint that he was mixed up in the murders and outrages of the shadowy Internationalists. Be that as it might, and the court did not decide it, he was sent to prison for five years for his paving stone display.

A DOG COMES TO COURT.

The dog who recently barked so appropriately at the Thames Police Court as to appear to be giving answers to the questions of the learned magistrate concerning him and to be prompting his master, seems to be at least as intelligent as the notorious "Bobs," who is still remembered for his appearance in court as the client of the late Sir Henry Curtis Bennett, who saved him from the death penalty. There was a very strong body of evidence that "Bobs" was a danger and a terror to the neighbourhood in which he lived, and Mr. Cancellor, the magistrate who first heard his case, having in the course of an interview in the Police Court yard barely escaped a savage attack with intent to do grievous bodily harm, signed the death warrant. Immediately "Bobs" became a national figure, the press and the public breaking into mass hysteria on his behalf with more zeal than for many a humble human being condemned to die. The Canine Defence League rushed to the rescue, and it was decided that a great criminal defender must be called in.

COUNSEL AND CLIENT.

Curtis Bennett was briefed for the appeal, and with more courage than most people realised, advised that "Bobs" should appear unmuzzled in court. He finished his speech with one hand in his pocket and the other caressing his client, who while on the table beside him had had sufficient good sense to confine himself to one small snap at his defender's fingers. The scene in court was all the more creditable to the two chief actors as it seems that during the consultation in the yard before the hearing at the Sessions "Bobs" had done his best to get his teeth into his advocate's leg. The eloquence of Curtis Bennett and the intelligently restrained demeanour of the appellant saved the day. Amid the cheers of the spectators "Bobs" returned home in triumph with a lorry load of supporters and the papers announcing "A Great Dog Fight at Sessions," relegated world events to a secondary place. Curtis Bennett walked quietly out of the court without saying a word to anyone. At any rate his client could not grasp his hand in gratitude.

A notice of the death at Fulham on 22nd August, of Mr. Richard Conisbee Johnson, for nearly fifty years valued clerk with Petch and Co., Solicitors, appeared in *The Daily Telegraph* last Wednesday.

Notes of Cases.

Court of Appeal.

Dismore v. Milton.

Greer and Slesser, L.J.J. 26th July, 1938.

PRACTICE—SLANDER ACTION—ACTION MORE THAN TWO YEARS AFTER WORDS ALLEGED—NO DEFENCE YET PLEADED—WHETHER STATEMENT OF CLAIM SHOULD BE STRUCK OUT—LIMITATION ACT, 1623 (21 Jac. I, c. 16), ss. 3, 7.

Appeal from Lawrence, J., in Chambers.

By a writ issued on the 13th May, 1938, the superintendent of a local fire brigade commenced an action to recover damages in respect of slanders alleged to have been spoken of him in his calling by the chairman of the local council's fire brigade committee on the 20th June, 1934, and the 18th March, 1936, and by a member of the council on the 7th January, 1936, and the 5th February, 1937. After the statement of claim had been delivered, but before any defence had been delivered, Lawrence, J., relying on the Limitation Act, 1623, s. 3, ordered the paragraphs in the statement of claim setting out the slanders, except the one alleged to have been published on the 5th February, 1937, to be struck out.

GREER, L.J., allowing the plaintiff's appeal, said that since *Stile v. Finch*, 4 Cro. Car. 381, and *Hawkins v. Billhead*, 4 Cro. Car. 404, the law had been as stated in *Dawkins v. Lord Penrhyn*, 4 App. Cas., at p. 59. When it appeared from the statement of claim that the cause of action arose before the commencement of the period limited by the Statute of Limitations for the bringing of the action, the defendant could not have the statement of claim struck out as disclosing no cause of action unless it was a case to which the Real Property Limitation Acts applied, because the plaintiff might be able to show that he was entitled to bring the action despite the expiration of the statutory period by reason of one of the exceptions in s. 7. The plaintiff had to wait to see whether the defendant pleaded the statute before he could plead that he came within one of the exceptions.

SLESSER, L.J., agreed.

COUNSEL: *Denning, K.C., and F. Lincoln; K. Jackson.*

SOLICITORS: *Theodore Goddard & Co.; Blewitt & Son.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Westminster Bank Ltd. v. Wilson.

Greene, M.R., Scott and Clauson, L.J.J.

28th July, 1938.

DEED—SETTLEMENT—EXECUTION BY ONE PARTY ON FAITH OF EXECUTION BY OTHER PARTY—NO EXECUTION BY OTHER PARTY—EFFECT.

Appeal from Morton, J.

In February, 1923, one S. (the settlor) by an indenture covenanted to pay W. for her life, or till the execution by him of a settlement in accordance with an option thereafter contained, £10 a week, out of which she was to maintain a child then expected to be born to her till it should attain twenty-one years, this sum to be paid to the child's guardian if W. predeceased it. By cl. 4 it was provided that if S. should by will bequeath or by settlement secure to the beneficiary during her life an annuity of equal amount to the weekly sum or greater, that should be in satisfaction of the weekly sum which should cease. By cl. 5 any such provision as was contemplated in cl. 4 might contain any trusts S. might wish not repugnant to the preceding text, and a declaration by him that it was in satisfaction of the earlier provisions should be binding on all parties. In October, 1923, after the birth, S. had £15,000 of stock inscribed in the bank's name intending to settle it on W. and the child; the income, equivalent to £10 a week, being thereafter paid to her. In August, 1925, S. signed,

sealed and delivered a settlement, a draft of which had been agreed by his solicitors and her's, reciting the 1923 deed, his wish to provide for her and the child, the transfer of the stock, and an agreement between himself and W. that in consideration of the provision now made she should release him from all liability under the 1923 deed, which should cease to have effect. W. was to have a protected life interest in the income of the fund which S. covenanted whenever necessary to make up to £10 a week. Subject to those provisions, the trust fund was to be held for the infant. By cl. 16, W. released S. from all covenants in the 1923 deed and by cl. 17 it was agreed between S. and W. that as from the execution of the deed the 1923 deed should cease to have effect. This settlement was sent to W., who expressed herself as willing to execute it if the 1923 deed were either destroyed or put into custody satisfactory to her. The settlement was never executed by W. or by the bank. In November, 1926, at the request of S., the bank sold the stock. In February, 1927, the solicitors of W. wrote to the solicitors of S. that she was ready to accept the settlement, but they replied contending that S. had revoked the proposal for the settlement. In May, 1927, W. returned the settlement unexecuted with a letter reaffirming her willingness to execute it and declaring the return to be without prejudice to her right to have a settlement executed. In June, 1927, the bank informed the solicitors of W. that unless within a week proceedings were taken to restrain them, they would pay the proceeds of the sale of the stock to S. No proceedings being begun, they paid the proceeds to S. against his indemnity. From January, 1927, the payments of £10 a week were made to W. by S. himself, who had cancelled his instructions to the bank to make the payments out of the income of the stock. As S. was now insolvent, his covenant in the 1923 deed was of little value. W. now sought a declaration that the bank was guilty of breach of trust in paying the proceeds of sale of the stock to the settlor. Morton, J., made the declaration.

GREENE, M.R., allowing the bank's appeal, said that the settlement of 1925 was delivered unconditionally and not as an escrow. The question was whether, when the proceeds were handed over, there was any existing trust in favour of W. and the infant of which the bank had notice. The bank never accepted the office of trustee by the contemplated method of execution of the settlement, but they held the stock and, if a trust existed of which they had notice, their duty was, in the event of their not accepting the trusteeship, to transfer it to a trustee duly constituted and no one else. There was no antecedent parol agreement. The parties meant to be bound by the written instrument alone. This was under seal, executed and delivered by the settlor, not as an escrow or conditionally. In such a case the deed was effective to convey the property and bind the covenantor, though the covenantee did not execute it (*Butler and Baker's Case*, 3 Co. Rep. 25a; *Morgan v. Pike*, 14 C.B. 472). If, on the true construction of a deed unconditionally delivered, the grant was to become effective or the covenant binding only on condition that the grantee or covenantee executed it, non-execution would prevent the grant or covenant from becoming effective. Such a condition was not here expressed and could not be implied merely because the deed was expressed to contain covenants by W. (see *Xenos v. Wickham*, L.R. 2 H.L., at p. 323). The failure of W. to execute it did not by itself make the settlement inoperative as the deed of S. The language used was sufficient to divest him of his equitable interest in the property immediately on execution by him and to vest it in the beneficiaries. Disclaimer by the bank could not have changed that (see *Donaldson v. Donaldson*, Kay at p. 718; *In re Chrimes* [1917] 1 Ch. 30). The question remained whether at the relevant date S. was entitled to treat the settlement as no longer effective. Though it was not executed, on its true construction, subject to any condition, it was executed on the faith that W. would execute it. By the transaction, the 1923 deed was to be abrogated. An

express release by W. was more satisfactory than a unilateral declaration by S. contemplated by cl. 5. The execution of the settlement by W. was not a matter of indifference to the parties. Further, the letter written by W. in returning the deed showed an intention to disclaim its benefit, though she claimed the right to call for another settlement. The rights of the infant stood or fell by the actions of W. On no principle could he claim benefit under a document executed on the faith of a release being given by W. executing the document when she did not. Further "if two persons execute a deed on the faith that a third will do so and that is well known to the other parties to the deed, the deed does not bind in equity if the third refuses to execute" (*Luke v. South Kensington Hotel Co.*, 11 Ch. D., at p. 125). This was not limited to the case where one of two or more persons who together constituted a single party did not execute the deed and the case of sureties. The principle applied to this case where the deed conferred a benefit on a third person not a party to it. Infancy could not alter the position.

SCOTT and CLAUSON, L.J.J., agreed in allowing the appeal.

COUNSEL: Sir Walter Monckton, K.C., Wynne Parry, K.C., and V. Holmes; Serjeant Sullivan, K.C., and H. Hart.

SOLICITORS: Murray, Hutchins & Co.; W. R. Perkins.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Sharpe's Deed of Release; Sharpe and Fox v. Gullick and Others.

Morton, J. 30th June, 1938.

SETTLEMENT—DEED OF RELEASE—INTEREST CREATED IN A SUM PAYABLE ANNUALLY FOR A TERM OF YEARS OUT OF RENTS AND PROFITS OF AN ESTATE—MARRIAGE SETTLEMENT CONTAINING COVENANT FOR PAYMENT OF FURTHER SUM FOR TERM OF YEARS—DEVISE OF PROPERTY BY WILL SUBJECT THERETO—SUBSEQUENT DEVISE BY OWNER ON TRUST FOR SALE—COMPOUND SETTLEMENT—POWERS OF TENANT FOR LIFE—SETTLED LAND ACT, 1925 (15 Geo. 5, c. 18), s. 1 (1) (v), (7)—LAW OF PROPERTY ACT, 1925 (15 Geo. 5, c. 20), s. 205 (1) (xxix)—LAW OF PROPERTY (AMENDMENT) ACT, 1926 (16 & 17 Geo. 5, c. 11).

By a deed of release dated the 10th March, 1818, W.S. and R.S. granted, bargained, sold, released, appointed and confirmed the Hoxton estate to R.D. and his heirs, to have and to hold the land to the use of J.S., his heirs and assigns, for ever, upon certain trusts. Under the trusts declared J.S., his heirs and assigns, were, for a term of 1,000 years, to pay out of the rents and profits an annual sum of £1,000 to J.S., R.D. and W.T., who were to stand possessed of it on certain trusts to be declared. These trusts were contained in a document dated the 11th March, 1818. (The present trustees of the document were the defendants F.G. and E.J.) The result of the deed of release was to vest the legal estate in fee simple in J.S. on trust for the payment of the sum of £1,000 for the term of 1,000 years, the trust creating an equitable interest. By a marriage settlement made in 1830, J.S., for himself, his heirs and assigns, covenanted to stand seized of the estate in trust out of the moneys to be received from fines or premiums or to arise from the rents and profits or by other means which might be deemed expedient to pay for a term of 500 years an annual sum of £400 to A.K., W.K. and G.H., their executors, administrators and assigns. (At the date of this summons the defendants the Royal Exchange Assurance were entitled to receive this sum.) J.S. died in 1863, having by his will left the estate, subject to the annuities, to his son, W.H.S., who died in 1867. He appointed D.L. and A.E. his executors and trustees, and left the estate to them in trust to pay certain further annuities and subject thereto to stand possessed of it for his son J.W.S. absolutely. (One of these annuities, an annuity of £100, was still payable

to his daughter, the defendant E.S., and the plaintiffs on this summons, W.H.S.S., his grandson and A.F. were the present trustees of his will.) J.W.S. died in 1917, appointing by his will his wife, C.S., his son W.H.S.S., and the Public Trustee to be his executors and trustees, and bequeathing them all his real and personal estate on trust for sale. Out of the proceeds of sale the trustees were directed to pay an annuity to his daughter, the defendant E.U., during her life, and to raise the sum of £3,000 to be paid to her, and subject thereto they were to stand possessed of the residue for W.H.S.S. absolutely. By a deed of appointment, made in 1928, A.F. was appointed trustee of this will jointly with W.H.S.S., in place of the Public Trustee. Various questions arose whether the estate was settled land within the Settled Land Act, 1925, and whether it was held on trust for sale.

MORTON, J., said that it had been contended that the effect of the marriage settlement of 1830 was to create a legal charge. That contention could not be accepted. The deed created only an equitable interest. The present general position was that the legal estate in the Hoxton estate had passed from W.H.S. to the trustees of his will, who, subject to the annuity to E.S., held it in trust for the legal personal representatives of J.W.S., to whom it was devised by the will of W.H.S. It happened that at the present time the trustees of the will of W.H.S. were also the trustees of the will of J.W.S. The matter was brought before the court for the purpose of clearing the title to the Hoxton estate. The plaintiffs contended that the land was settled land under the Settled Land Act, 1925, and that they were trustees of the compound settlement for the purposes of the Act. They relied on s. 1 (1) (v). It was submitted that the estate stood for the time being charged with the payment of certain annual sums for the benefit of certain persons and was, therefore, the subject of a settlement. Unless s. 1 (7), which was introduced by the Law of Property (Amendment) Act, 1926, applied, that argument was well founded. His lordship referred to the Settled Land Act, 1925, s. 117 (1) (xxx), and the Law of Property Act, 1925, s. 205, and then considered *In re Parker's Settled Estates* [1926] Ch., at pp. 257, 261, and *In re Norton* [1929] 1 Ch., at p. 88, and said that though the trustees of the will of W.H.S. happened also to be the trustees of the will of J.W.S., they did not by reason of that fact hold the estate on trust for sale within the meaning of s. 1 (7). If the trustees of the two wills had not been the same persons it would have been clear that the whole legal estate was held by the trustees of W.H.S. on trusts which did not include a trust for sale, and that the trustees of J.W.S. held on trust for sale only the beneficial interest given to him by the will of W.H.S. The fact that the same persons were the trustees of both wills could not have the result that the whole legal estate was now held on trust for sale within s. 1 (7). The settlement under which the estate was now settled land was a compound settlement, the documents constituting it being the deeds of 1818 and 1830 and the wills of W.H.S. and J.W.S. The deed of the 11th March, 1818, by which were declared the trusts of the annuity created by the deed of the 10th March, 1818, was not one of the instruments under which the land stood "charged for the time being with the payment of certain annual sums," and could not be included in the documents constituting the compound settlement. The plaintiff W.H.S.S., subject to the annuities created by the various documents, was under the will of J.W.S. absolutely entitled to the proceeds of sale of the estate. He was not a person having the powers of a tenant for life under the Settled Land Act, 1925, s. 20 (1) (viii) (see *In re Astor* [1922] 1 Ch. 364). Moreover, s. 31 of the Settled Land Act, 1925, did not constitute the plaintiffs trustees of the compound settlement. In view of the answers to the earlier questions it would be right for the court to appoint the plaintiffs W.H.S.S. and A.F. trustees of the compound settlement for the purposes of the Settled Land Act, 1925.

COUNSEL: *George Slade; Lightwood; H. L. Williams; Hon. Benjamin Bathurst.*

SOLICITORS: *Frere, Cholmeley & Co.; Jutsum, Jones & Co.; George Brown, Son & Vardy.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Hanscombe and Others v. Bedfordshire County Council.

Farwell, J. 27th July, 1938.

HIGHWAY—DITCH BESIDE ROAD—WHETHER PART OF HIGHWAY—HIGHWAY ACT, 1835 (5 & 6 Will. IV, c. 50), s. 67—HIGHWAY ACT, 1864 (27 & 28 Vict., c. 101), s. 48.

A road running between land belonging to the plaintiffs was flanked by a hedge or fence. On its east side, a ditch ran between the metalled surface, which was about fifteen and a half feet broad, and the fence. There was no evidence when or in what circumstances the highway was dedicated to the public. For many years the ditch had carried the overflow from a pond on the land of the plaintiffs lying east of the road. Starting from that pond, it ran for some distance over that land, then along the highway for some distance and, finally leaving it, emptied itself into another pond. The surface water from the land east of the highway drained into it, and also the surface water from the road, channels having been cut in the grass verge for that purpose. The plaintiff had kept it cleaned and had done certain work in connection with it, inserting an inspection chamber and diverting the greater part of the overflow from the pond by sinking an artesian well to carry water therefrom along pipes parallel with it. In 1937, a lorry slipping off the roadway, broke down the bank of the ditch and the defendant council finding it impossible to repair it satisfactorily laid down 6-inch pipes and filled it in. They had never before exercised acts of ownership over the ditch. The pipes were as effective as the ditch to carry away the surface water. The plaintiff now claimed that the defendants had been guilty of a trespass on their property. The defendants contended that the ditch was vested in them as part of the highway, or alternatively, that their acts were within the scope of their statutory powers.

FARWELL, J., said that the question whether the ditch was vested in the plaintiffs as part of the highway depended on whether it formed part of that which was dedicated to the public. The rights of the public on a road were to pass and re-pass along it. Their right was not limited to the metalled part, but extended to the whole. When a highway was bounded by a hedge and the whole was capable of being used to pass, the whole was deemed to have been dedicated, but when between the metalled part of the way and the hedge there was a ditch which *prima facie* was not adapted to the exercise of the right of passing, the presumption was that this did not form part of the highway. The presumption might be rebutted (*Chorley Corporation v. Nightingale* [1907] 2 K.B. 637), but the onus lay on those who asserted it to be part of the highway. Here there was not enough evidence to rebut the presumption. Even if the hedge at one time had been set considerably further back than at present and there had been a space between the ditch and the hedge, that would not have indicated that the space was part of the highway. The presumption against the ditch being part of the highway was very strong. It was almost essential to the landowner for draining his land, and it was impossible to suppose that any owner when dedicating the road intended to part with his rights in it. Where the only purpose of a ditch was to drain the highway, the presumption was more easily rebutted, but that was not the case here. As to the statutory powers of the council, they had relied on the Highway Act, 1835, s. 67, and the Highway Act, 1864, s. 48, but neither assisted them. They did not authorise them to fill in a ditch belonging to another, without taking the proper steps. The plaintiffs were entitled to a declaration of title.

COUNSEL: *Roxburgh, K.C. and G. Barratt; Montgomery, K.C.; C. M. White and H. Whitbread.*

SOLICITORS: *Pothecary & Barratt for Hawkins & Co., of Hitchin; F. Venn & Co., for J. B. Graham, of Bedford.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Vardon; Brown v. Vardon.

Farwell, J. 28th July, 1938.

ADMINISTRATION—WILL—PARTIAL INTESTACY—ANNUITY TO WIDOW—RESIDUE INSUFFICIENT TO PRODUCE AMOUNT—ACTUARIAL VALUE—RECOUPMENT OF CAPITAL—ADMINISTRATION OF ESTATES ACT, 1925 (15 Geo. 5, c. 23), ss. 46, 49.

The widow of a testator who left no issue survived him, and his brothers and sisters and their issue were the statutory next of kin. By his will he bequeathed her a life annuity of £400 a year, and devised her his freehold house. In the will there was also a pecuniary legacy and certain specific bequests. Subject to these dispositions, he died intestate. After the payment of debts, funeral and testamentary expenses and the legacy, the estate amounted to about £9,000, an amount insufficient by investment in Government securities to produce the annuity. The actuarial value of the annuity was about £4,000. The questions arose (1) whether the actuarial value should be paid to the widow; and (2) if so, whether by virtue of the provisions of the Administration of Estates Act, 1925, she should be paid out of the residuary estate £1,000 with 5 per cent. interest from the testator's death, and the income of the balance of the residuary estate for life, or whether the income of the residuary estate should be applied in recouping to capital the amount of the actuarial value paid to her.

FARWELL, J., said that the widow was entitled to be paid the actuarial value of the annuity: *In re Cottrell* [1910] 1 Ch. 402. The income of the residuary estate which was undisposed of should be applied during her life to recouping to capital the sum so paid, and she was not entitled to any part thereof. On her death the claim to £1,000 with interest would arise.

COUNSEL: *Winterbotham; Herbert Hart; Overton (N. Warren with him); Richard Wilberforce; G. Upjohn.*

SOLICITORS: *Wordsworth, Marr Johnson & Shaw; Gibson & Weldon.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re London General Insurance Co. Ltd.

Bennett, J. 29th July, 1938.

COMPANY—ASSURANCE COMPANY—VARIOUS CLASSES OF INSURANCE BUSINESS TRANSACTED—COMPULSORY WINDING-UP—VARIOUS CLASSES OF CREDITORS—RANKING *pari passu* SAVE WHEN PARTICULAR ASSETS TRACEABLE TO SEPARATE ASSURANCE FUND—ASSURANCE COMPANIES ACT, 1909 (9 Edw. 7, c. 49), s. 3.

An insurance company was compulsorily wound up under an order made in 1935. At the time of the order it carried on life assurance business, bond investment and endowment certificate business, motor insurance business, fire insurance business and general accident insurance business. Besides general creditors, it had creditors in respect of contracts entered into in connection with each of those classes of business. Questions arose as to the ranking of the creditors.

BENNETT, J., said that the main contest had been between the life assurance creditors and the bond investment creditors on the one side and the fire insurance creditors, the motor insurance creditors and the general creditors on the other side. The question depended on the language of the Assurance Companies Act, 1909, s. 3. His lordship referred to ss. 2, 4 and 5, to the Third Schedule, Note 4, and to the Fifth Schedule, Forms A and E, and said that all the

creditors of the company should rank *pari passu* against the assets of the company, save in so far as any particular investment could be traced to the life assurance fund or the bond investment fund respectively.

COUNSEL : *Cecil Turner* ; *Hon. Denys Buckley* ; *Neil Lawson* ; *J. G. Strangman* ; *B. M. Cloutman* ; *C. A. Settle*.

SOLICITORS : *Richard Rowlands & Co.* ; *William Hurd & Son* ; *Bennett & Bennett* ; *E. B. V. Christian & Co.* ; *Rule & Cooke* ; *T. & N. Blawie White*.

[Reported by *FRANCIS H. COWPER*, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Owners of S.S. "Catalina" and Others v. Owners of M.V. "Norma."

Charles and du Parcq, J.J. 28th July, 1938.

ARBITRATION—ARBITRATOR—OBSERVATIONS DISCRIMINATING BETWEEN VERACITY OF TWO NATIONALITIES—WHETHER REMOVAL JUSTIFIED.

Motion to remove an arbitrator on the ground of misconduct by acting unfairly and without impartiality between the parties.

A collision occurred between the "Catalina," a Portuguese ship owned by the claimants, and the "Norma," a Norwegian vessel. The parties agreed to submit the question of liability to an arbitrator in England. At the hearing before him, two Portuguese and two Norwegian witnesses gave evidence. Evidence was also given by the surveyors on each side, and legal arguments were heard. While counsel for the claimants was referring to a case in which an Italian steamer was concerned, the arbitrator made the following observation in the presence of the managing director of the claimant company : "They [the 'Norma's' witnesses] are not Italians. The Italians are all liars in these cases and will say anything to suit their book. The same thing applies to the Portuguese. But the other side here are Norwegians, and in my experience the Norwegians generally are a truthful people. In this case I entirely accept the evidence of the master of the 'Norma.'" The respondents did not dispute that those words or words to the same effect were used by the arbitrator. The arbitrator awarded in favour of the respondents in writing, after intimating verbally that he found the respondent's vessel "Norma" free from blame, and that he did not believe the evidence of the Portuguese witnesses. In an affidavit the claimants' managing director stated, *inter alia*, that the parties agreed to arbitrate in London because of their high appreciation of English justice, and that he would not have agreed to it if he had thought that any distinction would be drawn between two nationalities to the detriment of one. The claimants accordingly moved that the arbitrator should be removed.

CHARLES, J., said that the arbitrator's remarks connoted only one thing—that Portuguese were all liars and would say anything. It was a most unfortunate case. One did not know how it was that the arbitrator came to make those observations, or in whose presence he thought that he was making them. It was clear that he made them in the presence of the managing director of the claimants. It was clearly within the court's competence to comply with the request made that the arbitrator should be removed, and it was clear that he did express such an actual bias as to make it imperative that he should be removed. As had been said by Lord Hewart, C.J., in *R. v. Sussex Justices, Ex parte McCarthy* [1924] 1 K.B. 256, at p. 259 : "It is not merely of some importance, but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done." It was impossible in the present case to suppose that any Portuguese who heard the arbitrator's words would feel anything but bitter resentment or come to any other conclusion than that the matter was

not being dealt with impartially. The court must make the order in the terms prayed, but they considered that, as it was a misfortune for which neither party was responsible, there should be no costs in the proceedings. It was within the competence of the court to appoint another arbitrator, but they thought that the better course was to let the parties try to agree on one, with liberty to apply if they failed to agree.

COUNSEL : *F. A. Sellers*, K.C., and *J. V. Naishy*, for the claimants ; *H. G. Willmer*, for the respondents.

SOLICITORS : *Clyde & Co.* ; *Thomas Cooper & Co.*

[Reported by *R. C. CALBURN*, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Johnson v. Johnson.

Hodson, J. 15th July, 1938.

DIVORCE—PETITION ON GROUND OF DESERTION—PRIOR PETITION FOR JUDICIAL SEPARATION ALLEGING DESERTION—DISMISSAL OF PREVIOUS PROCEEDINGS ON APPLICATION OF PETITIONER—HELD DESERTION CONTINUING—MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), ss. 2 and 6.

In this husband's undefended petition for dissolution on the ground of desertion for three years immediately preceding the presentation of the petition, the question arose whether the petition was barred by reason of the fact that there had been a previous petition for judicial separation on the file during the currency of the statutory period.

HODSON, J., in giving judgment, said that the petitioner was married on the 15th August, 1927, and his wife deserted him towards the end of 1933, notwithstanding that he endeavoured to get her to return, but she refused. There was no doubt that the desertion on her part began to run by November, 1933, so that at the time of the coming into operation of the Matrimonial Causes Act, 1937, on the 1st January, 1938, the period of desertion required by the Act was fully complete. The difficulty was really of a technical nature, having regard to the case of *Stevenson v. Stevenson* [1911] P. 191. The petitioner presented a petition on the 18th September, 1937, for judicial separation from his wife on the ground of her desertion. The desertion therein relied upon was for two years, which was sufficient to support a prayer for judicial separation at that time. The respondent entered an appearance on the 20th September, 1937, and took no further step. Eventually that petition was dismissed on the application of the petitioner. The petition for divorce was dated the 10th February, 1938, and was on the ground of desertion for three years immediately preceding the presentation of the petition. The difficulty which arose was due to the fact that the Act of 1937 required a petitioner to prove desertion without cause for at least three years immediately preceding the petition. On the face of it, during part of the period, the petitioner, so far from being deserted by his wife, prayed the court to keep her away. By his petition for judicial separation he was asking the court to direct a separation from his wife. In *Stevenson v. Stevenson* the Master of the Rolls (Sir H. H. Cozens-Hardy) said at p. 194 : "The presentation of the petition and its continuance on the files of the court prevented the subsequent desertion from being without excuse. She was praying the court to require her husband to keep away." He (his lordship) had to consider whether the Court of Appeal in that case compelled him to dismiss the present petition. It would be very unfortunate if that were the result. Looking at s. 6 of the Act of 1937, it appeared that the legislature had in mind cases where decrees of judicial separation had been pronounced. It enacted : (1) "A person shall not be prevented from presenting a petition for divorce, or the court from pronouncing a decree of divorce, by reason only that the

petitioner has at any time been granted a judicial separation or an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, upon the same or substantially the same facts as those proved in support of the petition for divorce. (2) On any such petition for divorce, the court may treat the decree of judicial separation or the said order as sufficient proof of the adultery, desertion, or other ground on which it was granted, but the court shall not pronounce a decree of divorce without receiving evidence from the petitioner. (3) For the purposes of any such petition for divorce, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation or an order under the said Acts having the effect of such a decree shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since the granting thereof, be deemed immediately to precede the presentation of the petition for divorce." It appeared, therefore, that if the petitioner had prosecuted his petition for judicial separation and obtained a decree, he could have presented a petition for divorce and relied on the period of desertion immediately preceding the pronouncement of that decree. It would be an odd thing if the petitioner were to be in a worse position because he had abandoned the petition for judicial separation and started new proceedings, and he (his lordship) did not think he was bound so to hold. It seems to him, therefore, that he was entitled to say in the present case, *a fortiori*, that the desertion having been for a period of three years immediately preceding the presentation of the petition, the petitioner should succeed. There would therefore be a decree *nisi*.

COUNSEL: *Theodore Turner*, for the petitioner.

SOLICITORS: *Pickard & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Obituary.

SIR JOHN PAGET, K.C.

Sir John Rahere Paget, Bt., K.C., died at Burnham, Bucks, on Saturday, 20th August, at the age of ninety. He was educated at Trinity Hall, Cambridge, and was called to the Bar by the Inner Temple in 1873. He specialised in banking law, and he was at one time standing advising counsel to the Institute of Bankers. In 1899 he succeeded his father, Sir John Paget, the famous surgeon, as second baronet. He took silk in 1902, and in 1908 he became a Bencher of his Inn. Sir John was the author of "The Law of Banking," and also of the article on banks and banking in Halsbury's "Laws of England."

MR. H. W. DAVIES.

Mr. Howel William Davies, solicitor, a partner in the firm of Messrs. Edward T. Davies & Son, of Pontyclun, Tonypandy and Cowbridge, died recently at Bridgend, at the age of twenty-seven. He was admitted a solicitor in 1934. Mr. Davies was captain of Pontyclun Rugby Club and was a former schoolboy hockey international.

MR. L. E. EMMET.

Mr. Lewis Emanuel Emmet, solicitor, sole partner in the firm of Messrs. Taylor & Emmet, of Sheffield, died at his home at Nether Edge, on Thursday, 18th August, at the age of eighty-two. Mr. Emmet, who was admitted a solicitor in 1879, practised at Chesterfield and Bradford before going to Sheffield, where he entered into partnership with Mr. Alderman Taylor. He was the author of the well-known legal classic "Notes on Perusing Titles."

MR. W. A. JENNINGS.

Mr. Walter Augustus Jennings, solicitor, of Kentish Town Road, N.W., died in hospital at Lisbon recently, at the age of seventy-five. Mr. Jennings was admitted a solicitor in

1885. He was for many years vice-chairman and honorary solicitor of the St. Pancras Almshouses, and he was also a member of the governing body of the North-Western Polytechnic. He was vice-president of the North St. Pancras Conservative Association.

MR. S. A. MITCHELL.

Mr. Sidney Alfred Mitchell, solicitor, senior partner in the firms of Messrs. Mitchells and Messrs. Stern & Lynde, of Stratford, E., died on Thursday, 18th August. Mr. Mitchell was admitted a solicitor in 1891.

MR. A. WALSH.

Mr. Andrew Walsh, solicitor, senior partner in the firm of Messrs. Andrew Walsh & Son, of Oxford, died at his home at Boars Hill, Oxford, on Saturday, 20th August, at the age of sixty-five. Mr. Walsh was educated at St. Edward's School, Oxford, and was admitted a solicitor in 1895. He was appointed clerk to the Oxford City Magistrates in 1924, and in 1937 he was made a magistrate. He was chairman of the local board of the Alliance Assurance Co. Limited, and a director of several companies, including the M.G. Car Co. Limited, Morris Commercial Cars Limited, Morris Garages Limited, Wolseley Motors Limited and Nuffield Mechanisations and Aero Limited.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.]

Law of Libel.

Sir,—I see that in your "Current Topic" of 6th August, 1938, relating to Mr. A. P. Herbert's Bill for amending the law of libel, you mention that the Bill provides for limitation of the period during which actions of libel or slander can be brought to one year from the publication. At present, of course, the limitation period is six years in the case of libel, two years in the case of slander actionable *per se*, and six years in other cases of slander. It is, of course, desirable that the length of periods of limitation should be standardised, but I do not think that the draftsman of Mr. Herbert's Bill can have realised that the matter has already been dealt with by the Limitation Bill, 1938. This Bill implements the recommendations of the Wright Committee and was introduced into the House of Lords by Lord Maugham. It is at present awaiting its second reading in the Commons and is likely to be law before the end of the session. The Limitation Bill practically abolishes all periods of limitation in simple contract or tort, save the six-year period, and I should venture to suggest that it would be most undesirable if Mr. Herbert's Bill re-introduced a special period of limitation.

New Square, W.C.2.

G. H. NEWSOM.

16th August.

Legal Notes and News.

Honours and Appointments.

Mr. J. C. DAVISON, K.C., M.P., Parliamentary Secretary to the Northern Ireland Ministry of Home Affairs, has been appointed Recorder of Londonderry in place of Judge R. E. Osborne, who recently retired. Mr. Davison has been a member of the Northern Ireland Parliament since 1925.

Notes.

More than 100,000 users of home cinematograph apparatus and amateur film enthusiasts are said to be affected by a ruling of a local council which makes the showing of their films in private premises and clubs illegal without a cinematograph licence, and the ruling is being contested, says *The Times*, by the Institute of Amateur Cinematographers.

Evening classes in law will be held at the North-Western Polytechnic, Prince of Wales Road, N.W.5. The new session commences on Monday, 26th September. Enrolment commences on Monday, 19th September (6-9 p.m. each evening). Copies of the prospectus may be obtained from the Secretary.

The Rev. Bernard Clements, Vicar of All Saints, Margaret Street, W., preaching last Sunday on "The Press," says *The Times*, commented on the difficulties experienced by newspapers under the present law of libel and the fact that in America and France journalists were free in that respect. The remains of the old Defence of the Realm Act still cropped up from time to time, he said, and new terrors might be added apparently if the Official Secrets Act were to be applied as widely as its terms seemed to permit. Newspapers were the only education that a large majority of people had in this country after leaving school.

Wills and Bequests.

Mr. Henry George Randall Aldridge, retired solicitor, of Sedlescombe, Sussex, left £9,778, with net personality £9,636.

Mr. James Frankland, retired solicitor, of Maida Hill West, W., left £21,637, with net personality £21,509. He left £100 to the Solicitors' Benevolent Association.

Mr. Charles John Stewart Harper, solicitor, of St. John's Wood, senior partner in the firm of Waterhouse & Co., left £26,211, with net personality £26,053.

Mr. Allan Gibson Hughes, solicitor, of Shrewsbury, left £26,944, with net personality £21,995.

Mr. John Larden Williams, solicitor, of Neston, Cheshire, and of Liverpool, left estate of the gross value of £68,622, with net personality £50,343. He left, subject to his wife's life interest, a residue as to two-fifths equally between: The Solicitors' Benevolent Association, Liverpool Law Clerks' Association, Liverpool Council of Social Service, Liverpool Personal Service Society, Liverpool Boys' Association, Liverpool Union of Girls' Clubs and Neston Council of Social Service.

Autumn Assizes.

The following days and places have been fixed for holding the Autumn Assizes, 1938:—

OXFORD CIRCUIT.—Wrottesley, J.—Wednesday, 12th October, at Reading; Saturday, 15th October, at Oxford; Wednesday, 19th October, at Worcester; Saturday, 22nd October, at Gloucester; Saturday, 29th October, at Monmouth; Thursday, 3rd November, at Hereford; Tuesday, 8th November, at Shrewsbury; Tuesday, 15th November, at Stafford.

WESTERN CIRCUIT.—Lawrence, J.—Thursday, 13th October, at Salisbury; Wednesday, 19th October, at Dorchester; Tuesday, 25th October, at Wells; Saturday, 29th October, at Bodmin; Saturday, 5th November, at Exeter. Lawrence and Greaves-Lord, J.J.—Saturday, 19th November, at Bristol. Lawrence, J.—Saturday, 3rd December, at Winchester.

SOUTH-EASTERN CIRCUIT.—Finlay, J.—Thursday, 13th October, at Cambridge; Tuesday, 18th October, at Norwich; Tuesday, 25th October, at Ipswich; Monday, 31st October, at Chelmsford. Goddard, J.—Wednesday, 9th November, at Hertford; Saturday, 12th November, at Maidstone; Wednesday, 23rd November, at Kingston; Wednesday, 30th November, at Lewes.

MIDLAND CIRCUIT.—Atkinson, J.—Wednesday, 12th October, at Aylesbury; Saturday, 15th October, at Bedford; Wednesday, 19th October, at Northampton; Tuesday, 25th October, at Leicester; Thursday, 3rd November, at Lincoln; Monday, 14th November, at Derby; Monday, 21st November, at Nottingham; Wednesday, 30th November, at Warwick. Atkinson and Wrottesley, J.J.—Saturday, 3rd December, at Birmingham.

NORTH WALES AND CHESTER CIRCUIT.—Hilbery, J.—Wednesday, 26th October, at Caernarvon; Monday, 31st October, at Ruthin; Saturday, 5th November, at Chester.

Rules and Orders.

THE DISTRICT PROBATE REGISTRIES ORDER, 1938. DATED JULY 28, 1938. [S.R. & O., 1938, No. 757/L.19. Price 1d. net.]

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 8th September 1938.

	Div. Months.	Middle Price 24 Aug. 1938.	Flat Interest Yield.	Approximate Yield with redemption	
ENGLISH GOVERNMENT SECURITIES					
Consols 4% 1957 or after	FA	110 $\frac{1}{2}$	3 12 7	3 4 10	
Consols 2 $\frac{1}{2}$ %	JAJO	75 $\frac{1}{2}$	3 6 3	—	
War Loan 3 $\frac{1}{2}$ % 1952 or after	JD	102 $\frac{1}{2}$	3 8 1	3 4 9	
Funding 4% Loan 1960-90	MN	114	3 10 2	3 2 3	
Funding 3% Loan 1959-69	AO	99 $\frac{1}{2}$	3 0 5	3 0 9	
Funding 2 $\frac{1}{2}$ % Loan 1952-57	JD	97 $\frac{1}{2}$	2 16 6	2 18 9	
Funding 2 $\frac{1}{2}$ % Loan 1956-61	AO	91 $\frac{1}{2}$	2 14 6	3 0 0	
Victory 4% Loan Av. life 22 years	MS	110 $\frac{1}{2}$ xd	3 12 3	3 6 1	
Conversion 5% Loan 1944-64	MN	114 $\frac{1}{2}$	4 7 0	1 17 0	
Conversion 3 $\frac{1}{2}$ % Loan 1961 or after	AO	103 $\frac{1}{2}$	3 7 8	3 5 7	
Conversion 3% Loan 1948-53	MS	101 $\frac{1}{2}$	2 18 11	2 15 5	
Conversion 2 $\frac{1}{2}$ % Loan 1944-49	AO	100 $\frac{1}{2}$	2 9 7	2 7 2	
Local Loans 3% Stock 1912 or after	JAJO	88 $\frac{1}{2}$	3 7 10	—	
Bank Stock	AO	348 $\frac{1}{2}$	3 8 11	—	
Guaranteed 2 $\frac{1}{2}$ % Stock (Irish Land Act) 1933 or after	JJ	83 $\frac{1}{2}$	3 5 10	—	
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	90	3 6 8	—	
India 4 $\frac{1}{2}$ % 1950-55	MN	113	3 19 8	3 3 7	
India 3 $\frac{1}{2}$ % 1931 or after	JAJO	94	3 14 6	—	
India 3% 1948 or after	JAJO	81	3 14 1	—	
Sudan 4 $\frac{1}{2}$ % 1939-73 Av. life 27 years	FA	109 $\frac{1}{2}$	4 2 2	3 18 5	
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	2 19 11	
Tanganyika 4% Guaranteed 1951-71	FA	110	3 12 9	2 19 11	
L.P.T.B. 4 $\frac{1}{2}$ % T.F.A. Stock 1942-72	JJ	106	4 4 11	2 12 11	
Lon. Elec. T. F. Corp. 2 $\frac{1}{2}$ % 1950-55	FA	92	2 14 4	3 2 3	
COLONIAL SECURITIES					
Australia (Commonw <th>th</th>) 4% 1955-70	th	JJ	103	3 17 8	3 15 2
Australia (Commonw <th>th</th>) 3% 1955-58	th	AO	89	3 7 5	3 15 11
*Canada 4% 1953-58	MS	108	3 14 1	3 6 2	
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0	
New South Wales 3 $\frac{1}{2}$ % 1930-50	JJ	97	3 12 2	3 16 4	
New Zealand 3% 1945	AO	95	3 3 2	3 17 10	
Nigeria 4% 1963	AO	108	3 14 1	3 10 3	
Queensland 3 $\frac{1}{2}$ % 1950-70	JJ	96	3 12 11	3 14 5	
*South Africa 3 $\frac{1}{2}$ % 1953-73	JD	102	3 8 8	3 6 7	
Victoria 3 $\frac{1}{2}$ % 1929-49	AO	98	3 11 5	3 14 5	
CORPORATION STOCKS					
Birmingham 3% 1947 or after	JJ	87	3 9 0	—	
Croydon 3% 1940-60	AO	96	3 2 6	3 5 2	
*Essex County 3 $\frac{1}{2}$ % 1952-72	JD	103	3 8 0	3 4 7	
Leeds 3% 1927 or after	JJ	86	3 9 9	—	
Liverpool 3 $\frac{1}{2}$ % Redeemable by agreement with holders or by purchase	JAJO	101	3 9 4	—	
London County 2 $\frac{1}{2}$ % Consolidated Stock after 1920 at option of Corp. MJS	MJS	72 $\frac{1}{2}$	3 9 0	—	
London County 3% Consolidated Stock after 1920 at option of Corp. MJS	MJS	86	3 9 9	—	
Manchester 3% 1941 or after	FA	86	3 9 9	—	
Metropolitan Consd. 2 $\frac{1}{2}$ % 1920-49	MJS	98 $\frac{1}{2}$	2 10 9	2 13 2	
Metropolitan Water Board 3% "A" 1963-2003	AO	90	3 6 8	3 7 8	
Do. do. 3% "B" 1934-2003	MS	91	3 5 11	3 6 9	
Do. do. 3% "E" 1953-73	JJ	96 $\frac{1}{2}$	3 2 2	3 3 4	
*Middlesex County Council 4% 1952-72	MN	108	3 14 1	3 5 8	
* Do. do. 4 $\frac{1}{2}$ % 1950-70	MN	113	3 19 8	3 3 7	
Nottingham 3% Irredeemable	MN	87	3 9 0	—	
Sheffield Corp. 3 $\frac{1}{2}$ % 1968	JJ	102	3 8 8	3 7 10	
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS					
Gt. Western Rly. 4% Debenture	JJ	106	3 15 6	—	
Gt. Western Rly. 4 $\frac{1}{2}$ % Debenture	JJ	113 $\frac{1}{2}$	3 19 4	—	
Gt. Western Rly. 5% Debenture	JJ	126 $\frac{1}{2}$	3 19 1	—	
Gt. Western Rly. 5% Rent Charge	FA	119 $\frac{1}{2}$	4 3 8	—	
Gt. Western Rly. 5% Cons. Guaranteed	MA	106 $\frac{1}{2}$	4 13 11	—	
Gt. Western Rly. 5% Preference	MA	94 $\frac{1}{2}$	5 5 10	—	
Southern Rly. 4% Debenture	JJ	105	3 16 2	—	
Southern Rly. 4% Red. Deb. 1962-67	JJ	106 $\frac{1}{2}$	3 15 1	3 11 9	
Southern Rly. 5% Guaranteed	MA	109 $\frac{1}{2}$	4 11 4	—	
Southern Rly. 5% Preference	MA	93 $\frac{1}{2}$	5 6 11	—	

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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